



DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

[Docket No. USPC-2021-05]

RIN 1104-AA10

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The United States Parole Commission is adopting a final rule to conform with the District of Columbia Council's amendment to medical and geriatric parole law which removed an exception that excluded prisoners convicted of certain violent offenses from medical parole consideration.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Helen H. Krapels, General Counsel, U.S. Parole Commission, 90 K Street, N.E., Third Floor, Washington, D.C. 20530, telephone (202) 346-7030. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION:

Background: The U.S. Parole Commission is responsible for medical parole release decisions for District of Columbia felony offenders who are eligible for parole. The Commission took over this responsibility on August 5, 1998 as a result of the National Capital Revitalization and Self-Government Improvement Act of 1997, Public Law 105-33. 11231(a)(1), 111 Stat. 712, 745 (effective August 5, 1998). The Commission's new duties included medical parole determinations for D.C. offenders previously made by the D.C. Board of Parole pursuant to the Medical and Geriatric Parole Act of 1992, D.C. Law 9-271; D.C. Official Code 24-461, et seq. (effective May 15, 1993).

The Commission promptly enacted regulations to implement its new duties, which included the rule that set forth criteria and procedures for implementing the medical parole provisions in D.C. Code 24-261-64, 267 at 28 CFR 2.77. 63 FR 39172-39183 (July 21, 1998). Regulation 28 CFR 2.77 governs the Commission's decision to release a D.C. prisoner on medical parole. The Commission exercises its discretion to grant medical parole to eligible prisoners on the basis of either terminal illness or permanent and irreversible incapacitation if the Commission determines the prisoner meets certain eligibility criteria. Originally, prisoners convicted of certain violent offenses were excluded from benefits of medical parole. (D.C. Law 9-271; D.C. Official Code 24-467.)

In 2012, the D.C. Council amended D.C. Code 24-267 when it approved the Compassionate Release Authorization Amendment Act of 2012, D.C. Law 19-318 (Act 19-479). D.C. Law 19-318 rewrote section 24-467, which formerly read: "Persons convicted of first degree murder or persons sentenced for crimes committed when armed under 22-4502, or under 22-4504(b), and 22-2803, shall not be eligible for geriatric or medical parole." Effective June 15, 2013, D.C. Law 19-318 removed the exception for medical parole.

The Revitalization Act requires the Commission to follow District of Columbia parole law and regulations and authorizes the Commission to "amend or supplement" the parole regulations of the District of Columbia as it sees fit. See D.C. Code 24-1231(a)(1)(2001). As

part of that authority, the Parole Commission has decided to update its regulation in light of the change in D.C. law that relates to the medical parole exception by promulgating a final rule to amend 28 CFR 2.77 to remove paragraph (g)(1). As a result, prisoners convicted of certain violent offenses will not be excluded from the benefit of medical parole and 28 CFR 2.77 will comport with current D.C. law. See D.C. Code 24-267.

The rule change does not impact the sole discretion and jurisdiction of the Commission to grant medical parole. See D.C. Code 24-1231(a)(1)(2001); D.C. Code 24-463. Following the rule change, the Commission will still consider whether to exercise its discretion to grant medical parole for those prisoners previously excluded from medical parole as it will any other prisoner.

Because this action is being taken to conform with a change in D.C. statute, it is being published as a final rule.

Executive Orders 12866 and 13563

This regulation has been drafted and reviewed in accordance with Executive Order 12866, “Regulation Planning and Review,” section 1(b), Principles of Regulation, and in accordance with Executive Order 13565, “Improving Regulation and Regulatory Review,” section 1(b), General Principles of Regulation. The Commission has determined that this rule is not a “significant regulatory action” under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications requiring a Federalism Assessment.

Regulatory Flexibility Act

This rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local, or tribal governments, or the private sector, to spend \$100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E–Congressional Review Act)

This rule is not a “major rule” as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 Subtitle E–Congressional Review Act, now codified at 5 U.S.C. 804(2). This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on the ability of United States-based companies to compete with foreign-based companies. Moreover, this is a rule of agency practice or procedure that does not substantially affect the rights or obligations of non-agency parties, and does not come within the meaning of the term “rule” as used in Section 804(3)(C), now codified at 5 U.S.C. 804(3)(C). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

The Final Rule

Accordingly, the U. S. Parole Commission amends 28 CFR part 2 as follows:

PART 2 - [AMENDED]

1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Revise §2.77(g) to read as follows:

§2.77 Medical parole.

* * * * *

(g) Notwithstanding any other provision of this section, a prisoner shall not be eligible for medical parole on the basis of a physical or medical condition that existed at the time the prisoner was sentenced (D.C. Code 24-462).

Patricia K. Cushwa,
Chairman (Acting),
U.S. Parole Commission.

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